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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KIRBY SPENCER,)	CASE NO. 2:14-cv-01136-RFB-(PAL)
)	
Plaintiff,)	STIPULATED PROTECTIVE ORDER
)	REGARDING PRODUCTION OF
v.)	CONFIDENTIAL INFORMATION
)	
AT&T DIGITAL LIFE, INC.)	
)	
Defendant.)	
)	
)	

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action may involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 7.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal without court approval; Civil Local Rule 10-5(b) sets forth the procedures that must be followed when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as

1 a consultant in this action.

2 2.7 House Counsel: attorneys who are employees of a party to this action. House
3 Counsel does not include Outside Counsel of Record or any other outside counsel.

4 2.8 Non-Party: any natural person, partnership, corporation, association, or other
5 legal entity not named as a Party to this action.

6 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
7 action but are retained to represent or advise a party to this action and have appeared in this
8 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
9 that party.

10 2.10 Party: any party to this action, including all of its officers, directors, employees,
11 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

12 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
13 Material in this action.

14 2.12 Professional Vendors: persons or entities that provide litigation support services
15 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
16 organizing, storing, or retrieving data in any form or medium) and their employees and
17 subcontractors.

18 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
19 “CONFIDENTIAL.”

20 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
21 Producing Party.

22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only Protected Material
24 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
25 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
26 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

27 4. DURATION

28

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) For information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each page that contains protected material, except that in the case of multi-page documents bound together by staple or other permanent binding,

1 the word(s) “Confidential” need only be stamped on the first page of the document for the entire
2 document to be treated as Confidential.

3 (b) In the case of depositions, including exhibits thereto, or other pretrial testimony: (i)
4 by a statement on the record by any counsel or the deponent, at the time of such disclosure; or
5 (ii) by written notice from any Party or Third Party’s counsel or the deponent or his/her counsel,
6 within ten business days after receiving a copy of the transcript thereof, designating all or some
7 of the transcript and/or documents referred to therein as Confidential. Such written notice must
8 be sent to counsel for all Parties, the deponent and counsel for the deponent. Only those portions
9 of the transcripts so designated as “Confidential” may be treated as Confidential. The Parties
10 may modify this procedure for any particular deposition or pretrial testimony by a writing signed
11 by counsel for all Parties and by the deponent or counsel for the deponent, without further order
12 from the Court.

13 (c) for information produced in some form other than documentary and for any other
14 tangible items, that the Producing Party affix in a prominent place on the exterior of the
15 container or containers in which the information or item is stored the legend
16 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
17 the Producing Party, to the extent practicable, shall identify the protected portion(s).

18 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified
19 information or items does not, standing alone, waive the Designating Party’s right to secure
20 protection under this Order for such material. Upon correction of a designation, the Receiving
21 Party must make reasonable efforts to assure that the material is treated in accordance with the
22 provisions of this Order.

23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Any Party may challenge a designation of confidentiality
25 at any time. A Party does not waive its right to challenge a confidentiality designation by
26 electing not to mount a challenge promptly after the original designation is disclosed.

27 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
28 Party’s confidentiality designation must do so in good faith and must begin the process by

1 notifying counsel for the Designating Party in writing. To avoid ambiguity as to whether a
 2 challenge has been made, the written notice must recite that the challenge to confidentiality is
 3 being made in accordance with this specific paragraph of the Protective Order. The parties shall
 4 attempt to resolve each challenge in good faith and must begin the process by conferring within
 5 14 days of the date of service of notice. In conferring, the Challenging Party must explain the
 6 basis for its belief that the confidentiality designation was not proper and must give the
 7 Designating Party an opportunity to review the designated material, to reconsider the
 8 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
 9 designation. A Challenging Party may proceed to the next stage of the challenge process only if
 10 it has engaged in this meet and confer process first or establishes that the Designating Party is
 11 unwilling to participate in the meet and confer process in a timely manner.

12 6.3 Judicial Intervention. If the Parties cannot resolve a challenge by negotiation, and
 13 the Court has not provided for a different procedure to handle such disputes, then the
 14 Challenging Party may make an application for a ruling from the Court on the continued
 15 application of the “Confidential” designation of such information or document. The parties shall
 16 comply with applicable Ninth Circuit authority requiring the parties to make a threshold showing
 17 before in camera is requested. The burden is on the party asserting confidentiality to establish
 18 the information is entitled to protection.

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
 21 or produced by another Party or by a Non-Party in connection with this case only for
 22 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
 23 disclosed only to the categories of persons and under the conditions described in this Order.
 24 Protected Material must be stored and maintained by a Receiving Party at a location and in a
 25 secure manner that ensures that access is limited to the persons authorized under this Order.

26 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
 27 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
 28 disclose any information or item designated “CONFIDENTIAL” only to:

Lines
 16-18
 modified
 by the
 court.

1 (a) Counsel of record for the Parties, their employees, their staff, and their
 2 support personnel (including any outside vendor for simple reproduction, computer scanning, or
 3 photocopying);

4 (b) The officers, directors, and employees (including House Counsel) of the
 5 Receiving Party to whom disclosure is reasonably necessary for this litigation;

6 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
 7 is reasonably necessary for this litigation and who have signed the “Acknowledgment and
 8 Agreement to Be Bound” (Exhibit A);

9 (d) The Court, its personnel, and the jury;

10 (e) Court reporters and videographers present at any hearing, deposition or trial;

11 (f) Professional jury or trial consultants, mock jurors, and Professional Vendors or
 12 other consultants to whom disclosure is reasonably necessary for this litigation and who have
 13 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (g) Actual or potential witnesses in connection with any deposition, hearing or
 15 trial. However, the witness shall not be entitled to retain possession of any such Confidential
 16 Information following the completion of his deposition and shall return any such Confidential
 17 Information to counsel who disclosed it to him during the course of his deposition;

18 (h) The author or recipient of a document containing the information or a
 19 custodian or other person who otherwise possessed or knew the information.

20 7.3 Filing Protected Material. Without written permission from the Designating Party
 21 or a court order secured after appropriate notice to all interested persons, a Party may not file in
 22 the public record in this action any Protected Material. A Party that seeks to file under seal any
 23 Protected Material must comply with Civil Local Rule 10-5(b) and any other rules or orders by
 24 the court governing the filing of confidential documents. If a Party’s request to file Protected
 25 Material under seal is denied by the court, then the Party may file the information in the public
 26 record.

27 7.4 Use in Court. In the event that any Confidential Information is used in any Court
 28 proceeding in this action, it shall not lose its confidential status through such use, and the party

1 using such shall take all reasonable steps to maintain its confidentiality during such use unless
2 the Court orders otherwise.

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
4 LITIGATION

5 If a Party is served with a subpoena or a court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
7 Party must:

8 (a) promptly notify in writing the Designating Party (by email if possible). Such
9 notification shall include a copy of the subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
11 other litigation that some or all of the material covered by the subpoena or order is subject to this
12 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
14 Designating Party whose Protected Material may be affected.

15 If the Designating Party timely seeks a protective order, the Party served with the
16 subpoena or court order shall not produce any information designated in this action as
17 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
18 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party
19 shall bear the burden and expense of seeking protection in that court of its confidential material –
20 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
21 Party in this action to disobey a lawful directive from another court.

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
23 LITIGATION

24 (a) The terms of this Order are applicable to information produced by a Non-Party in this
25 action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
26 connection with this litigation is protected by the remedies and relief provided by this Order.
27 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
28 additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

The inadvertent production or disclosure of privileged or otherwise protected information, documents, or other materials shall not constitute a waiver of any applicable

1 privilege or protections, including, for example, the attorney-client privilege, the work product
2 protection, or any other privilege or protection provided under the law. Upon receiving written
3 notice from the Producing Party that privileged information or work product material has been
4 inadvertently produced, all such information, and copies thereof, shall be returned to the
5 Producing Party within two business days of receipt of such notice. Any analysis, memoranda or
6 notes which were internally generated by the Receiving Party based upon such information shall
7 be destroyed. Upon receiving written notice from the Producing Party that Confidential
8 Information has not been appropriately so designated, all such information shall be immediately
9 re-designated and treated appropriately. The Party receiving such material re-designated as
10 Confidential shall make a reasonable, good faith effort to ensure that any analysis, memoranda,
11 or notes which were internally generated based upon such information shall immediately be
12 treated in conformance with any such re-designation.

13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
15 seek its modification by the court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
17 Order no Party waives any right it otherwise would have to object to disclosing or producing any
18 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
19 no Party waives any right to object on any ground to use in evidence of any of the material
20 covered by this Protective Order.

21 12.3 Remedies and Continuing Jurisdiction. In the event of a breach or threatened
22 breach of any provision of this Order, the non-breaching Party shall be entitled to seek
23 immediate injunctive relief from the Court, without the necessity of showing any irreparable
24 injury or special damages. Such remedy shall not be deemed to be the exclusive remedy for the
25 breach of this Order, but shall be in addition to all other remedies at law or equity, or pursuant to
26 any applicable provisions of the Federal Rules of Civil Procedure, available to the non-breaching
27 Party, including the power to hold parties or other violators of this Order in contempt or such
28 other sanctions as may be available to the Court. This Court shall retain jurisdiction of all

1 matters pertaining to this Order, and the Parties agree to submit to the jurisdiction of this Court
 2 for matters relating to the enforcement of this Order.

3 13. FINAL DISPOSITION

4 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
 5 Receiving Party must return all Protected Material to the Producing Party or destroy such
 6 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
 7 compilations, summaries, and any other format reproducing or capturing any of the Protected
 8 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
 9 submit a written certification to the Producing Party (and, if not the same person or entity, to the
 10 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
 11 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
 12 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
 13 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 14 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
 15 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
 16 product, and consultant and expert work product, even if such materials contain Protected
 17 Material. Any such archival copies that contain or constitute Protected Material remain subject to
 18 this Protective Order.

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 Dated: December 14, 2014

Dated: December 14, 2014

21 /s/ Joel D. Smith

/s/ Craig K. Perry

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8
9 Attorneys for Defendant
10

11 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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13 DATED: December 23, 2014



14 Peggy A. Leen
15 United States Magistrate Judge
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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under
 penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order
 that was issued by the United States District Court, District of Nevada in the case of *Spencer v.*
AT&T Digital Life, Inc., Case No. 2:14-cv-01136, dated _____. I agree to comply with
 and to be bound by all the terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment in the
 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
 item that is subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court, District of
 Nevada for the purpose of enforcing the terms of this Stipulated Protective Order, even if such
 enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my agent for service of process in connection with this action or any proceedings
 related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____